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January 26, 1983

Ann Backus, Acting Director
NH Commission on the Arts
40 North Main Street
Concord, NH 03301

Dear Ms. Backus:

On January 21, 1983, you met with me to discuss drafting conflict of interest guidelines to be implemented by the New Hampshire Commission on the Arts (hereinafter "Commission"). At that time you requested that we provide some background information on the New Hampshire law governing conflict of interest for public officials.

Two New Hampshire statutes address the general area of conflict of interest for public officials. RSA 95 bars public officials from buying real estate, selling or buying goods in excess of \$200, or participating in certain insurance dealings. RSA 643:2 further makes it a misdemeanor for a public servant to acquire or divest himself of a pecuniary interest in any property, transaction or enterprise which may be affected by an official action or information acquired by virtue of this office. This, however, is not specifically a conflict of interest statute.

The law regarding conflict of interest is found, for the most part, in the common law of New Hampshire, which identifies a conflict of interest where a potential exists for a public officer to influence the outcome of a matter in which he



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has a direct personal and pecuniary interest." Marsh v. Hanover, 113 N.H. 667, 672 (1973). Disqualification is required when "the personal pecuniary interest of the official [is] immediate, definite and capable of demonstration; not remote, uncertain, contingent, and speculative, that is, such 'that men of ordinary capacity and intelligence would not be influenced by it.'" Atherton v. Concord, 109 N.H. 164, 165 (1968). The Atherton court cautioned, however, that "if every possibility of conflict, no matter how remote, uncertain, contingent, insubstantial or speculative, were cause for disqualification, any persons who are peculiarly suited for public office by the very reason of their commercial or professional experience would be prevented from contributing their services to the community." 109 N.H. at 165-166. See also State, ex rel. Thomson v. State Board of Parole, 115 N.H. 414, 422 (1975).

I trust this will provide some guidance in determining those areas which should be addressed by rules concerning conflict of interest. Should you have any additional questions, please let me know.

Very truly yours,

Loretta S. Platt

Loretta S. Platt
Assistant Attorney General
Division of Legal Counsel

LSP/gla
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